Government of
Saskatchewan

2006-2007
Annual Report

Saskatchewan
Justice

Public Guardian and
Trustee of Saskatchewan

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This annual report is also available in electronic form from the Department's web site at **www.justice.gov.sk.ca**

Letters of Transmittal

His Honour the Honourable Dr. Gordon L. Barnhart
Lieutenant Governor of Saskatchewan

May it Please Your Honour:

I have the pleasure to transmit the Annual Report of the Public Guardian and Trustee of Saskatchewan for the year ending March 31, 2007.

I am pleased to report that the financial statements for the above fiscal year have now been finalized and audited.

The staff of the Public Guardian and Trustee are to be commended for their hard work and commitment to their clients.

Respectfully submitted,

Frank Quennell, Q.C.
Minister of Justice and Attorney General

The Honourable Frank Quennell, Q.C.
Minister of Justice and Attorney General

Dear Sir:

I have the pleasure to submit for your consideration the Annual Report of the Public Guardian and Trustee of Saskatchewan for the year ending March 31, 2007.

The Office has made major progress in a number of areas. I refer you to the goals and the accomplished results in this report.

Respectfully submitted,

Ronald J. Kruzeniski, Q.C.
Public Guardian and Trustee

Mandate

Vision

A society where the interests of vulnerable people are protected

Mandate

The mandate of the Office of the Public Guardian and Trustee is to:

- protect the property rights of children under the age of 18;
- administer the property and finances of adults who are incapable of managing their financial affairs, monitor other property guardians and investigate allegations of financial abuse;
- administer the estates of deceased persons; and
- hold and administer unclaimed property.

Guiding Principles

- Clients are entitled to a continuum of services from the Public Guardian and Trustee.
- Clients of the Public Guardian and Trustee should be able to obtain service in the simplest way possible.
- The Public Guardian and Trustee, although being easily accessible, should be the appointment of last resort.
- Every client is entitled to quality and timely service.
- The Public Guardian and Trustee will protect the assets of each client and attempt to maximize the rate of return.
- To the extent possible, every service of the Public Guardian and Trustee should be charged for on a cost-recovery basis.

Goals and Objectives

Goal 1 – Greater security and safety for the affairs of vulnerable people

Objective 1 – Intervene to secure the interests of vulnerable adults, children and deceased persons where permitted or directed by law

Objective 2 – Where possible, protect the estates of vulnerable adults and children from financial abuse and enhance the protection of their personal affairs where appropriate and permitted by law

Goal 2 – Quality management of clients' assets and protection of their interests

Objective 1 – Identify, secure and manage clients' property and assets in a timely, prudent manner and maximize the rate of return

Objective 2 – Maintain accurate records of clients' property, assets, incomes and payments

Objective 3 – Make decisions regarding disbursement of clients' property in a timely and prudent manner

Objective 4 – Manage costs to clients and to the Office effectively

Goal 3 – Knowledge and expertise around policy issues and law reform initiatives that affect clients' interests or the protection of vulnerable people

Objective 1 – Work with others in government to develop common approaches to legal and policy issues of concern to the Office

Objective 2 – Work with other Public Guardians and Trustees to develop common approaches to legal and policy issues of concern to the Office

Objective 3 – Develop a research basis for understanding the legal and policy issues of concern to the Office

Objective 4 – Promote public knowledge of the abuse of vulnerable people and develop potential tools for their protection

Goal 4 – A high quality of work life, where all members of the Office develop and use their skills, take leadership and share in decision-making as part of a team

Objective 1 – Encourage leadership through staff skills development

Objective 2 – Recognize the achievements and accomplishments of employees

Objective 3 – Support a balance between work and family life

Workplace Values

The Public Guardian and Trustee and its staff believe in high quality service provided in a knowledgeable, courteous and professional manner. This service:

- contributes to the public's confidence in, and understanding of, the Public Guardian and Trustee;
- is responsive and sensitive to people's needs;
- is open, honest and candid while respecting legitimate rights to privacy; and
- is accessible.

The Public Guardian and Trustee and its staff value a high quality of work life where all members:

- share in decision-making;
- demonstrate leadership;
- respect and communicate with each other;
- take personal initiative;
- have pride in their work;
- develop individual skills and abilities;
- develop team building skills; and
- work in a safe, healthy and adequately resourced work environment.

The Public Guardian and Trustee and its staff are accountable to clients and to the taxpayers of Saskatchewan for the wise, innovative and effective use of resources.

The Public Guardian and Trustee and its staff believe in working together as a team, through negotiations and partnership with others, for mutually acceptable outcomes. The Public Guardian and Trustee and its staff respect and value diversity and equality among clients and employees by recognizing, encouraging and understanding the individuality of each person.

What does the Office do?

For children under the age of 18

- Holds funds for children under the age of 18.
- Monitors the actions of executors and trustees managing property for children.
- Manages children's interests in estates, lotteries, insurance policies and permanent impairment benefits.
- Approves settlements for personal injury claims and fatal accident claims and manages the proceeds of those claims.
- Approves legal fees for settlements of personal injury claims or fatal accident claims.
- Consents to the sale, transfer or lease of real estate where children have an interest.
- Acts as property guardian for permanent wards of the province.

For persons who are not capable of managing their own financial affairs

- The Public Guardian and Trustee can be appointed as property guardian in two different ways:
  - A Certificate of Incompetence under *The Mentally Disordered Persons Act*
    - A medical doctor issues a Certificate of Finding of Incompetence;
    - A Chief Psychiatrist issues a Certificate of Incompetence;
    - The Public Guardian and Trustee issues an Acknowledgement to act;
    - The Public Guardian and Trustee has up to one year to issue an Acknowledgement after the date of the Certificate of Incompetence.
  - A court order under *The Adult Guardianship and Co-decision-making Act*
    - Under *The Adult Guardianship and Co-decision-making Act*, the court can appoint the Public Guardian and Trustee as property guardian, if no one else wants to act or a family is in dispute.
- When the Public Guardian and Trustee acts as property guardian, the Office is responsible for managing all the financial affairs of the person and does some or all of the following:
  - ascertains the assets and debts of the person;
  - determines the monthly income and expenses of the person;
  - manages any personal property or real estate for the person;
  - places funds of the person in the Common Fund;
  - makes any claims to recover funds on behalf of the person and, if necessary, commences a legal action;
  - defends or settles claims against the person;
  - arranges for the preparation of income tax returns.
- The Public Guardian and Trustee may also act as temporary property guardian, if appointed by the court.
- Where an adult is mentally incapable, the Public Guardian and Trustee may require the attorney, under a power of attorney, to provide an accounting.
- The Public Guardian and Trustee may investigate an allegation that a vulnerable person is being subjected to financial abuse.
- The Public Guardian and Trustee may require a financial institution to suspend the withdrawal or payment of funds from a person's account for up to 30 days, where the Public Guardian and Trustee has reasonable grounds to believe that the person is a vulnerable adult and the Public Guardian and Trustee has received an allegation that the person is being subjected to financial abuse.

For deceased persons' estates

- Usually the family will administer the estate of a deceased person, but sometimes there is no one to act as administrator or the family is in dispute.

- In these instances, the Public Guardian and Trustee can apply as official administrator.

- If family members are disputing the validity of a will, the Public Guardian and Trustee can be appointed as administrator pending the outcome of the litigation.

- When the Public Guardian and Trustee is appointed administrator, the Office is responsible for dealing with all the financial affairs of the deceased and does the following:

  - ascertains all the assets and liabilities of the deceased;
  - determines the beneficiaries of the deceased estate;
  - pays all income taxes owed by the deceased if there are sufficient funds;
  - pays all liabilities of the deceased if there are sufficient funds; and
  - distributes the estate to the beneficiaries according to the will or *The Intestate Succession Act*.

For missing persons

- The Public Guardian and Trustee can hold funds for persons whose whereabouts are unknown and while it is holding those funds, it may do the following:

  - search for the missing person;
  - advertise in an attempt to locate the missing person;
  - hire an heir locator to attempt to locate the missing person; and
  - after six years, and the person still cannot be found, pay the funds to the Crown.

For the Common Fund

Pursuant to section 47 of *The Public Guardian and Trustee Act*, all funds received by the Office are to be placed in the Common Fund. Section 47 allows the Office to invest a portion of those funds. This investment activity is governed by an investment policy. This policy was last updated November 2006 and the complete policy can be found at **http://www.saskjustice.gov.sk.ca/PublicTrustee/docs/PTrusteeSk2006PolicyFinal.pdf**

A summary of the policy is provided in this report.

An investment manager, Greystone Managed Investments Inc., makes the investment decisions. The investment manager is required to comply with the investment policy. Regular compliance reports are provided and any deviations from policy are reported to the Public Guardian and Trustee.

An investment consultant, Hewitt Associates, monitors the actions and performance of the investment manager. The investment consultant meets with the Investment Advisory Committee on a periodic basis to review the performance of the Common Fund and, more particularly, the investment manager.

The custodian of the Common Fund is RBC Dexia. The custodian is responsible for safekeeping of the assets, income collection, settlement of investment transactions, and accounting for the investment transactions and related holdings.

The investment policy provides that investments can be made in different asset classes, which are as follows:

Common Fund Benchmark and Asset Component Ranges

	Minimum Per Cent	Benchmark Per Cent	Maximum Per Cent
Equities			
Canadian Equities	5.0	14.0	25.0
U.S. Equities	5.0	13.0	25.0
Non-North American Equities	5.0	13.0	25.0
Total Foreign Equities	10.0	26.0	40.0
Total Equities	20.0	40.0	50.0
Total Fixed Income			
Bonds	40.0	57.0	70.0
Short-term Investments	2.0	3.0	30.0
Total Fund		**100.0**	

Each asset class has a minimum percentage that can be invested in that class and a maximum amount that can be invested in that class. Each asset class also has a benchmark percentage. The performance of the investment manager is monitored against market rates of return in each asset class. Total Fund performance is measured against a benchmark portfolio return, which is calculated by applying market rates of return to the benchmark portfolio weights.

The Common Fund is invested in a manner that reflects the highest standard of prudence in investment management and the high duty of care required to fulfill the responsibilities of the Office of the Public Guardian and Trustee. Accordingly, the Common Fund is invested in a prudently diversified portfolio of high quality securities, with an overall conservative orientation. The Common Fund objective is to minimize the risk of a loss of capital, while providing current income sufficient to meet ongoing cash needs and to provide potential for capital appreciation over time to meet the needs of the clients with higher risk tolerances and longer investment time horizons.

As of March 31, 2007, the following amounts were invested in each asset class:

	(000s)	Per Cent
Canadian Equities	$ 15,367	11.9
U.S. Equities	17,659	13.6
Non-North American Equities	17,414	13.5
Bonds	73,059	56.5
Short-term Investments	5,819	4.5
Total	**$ 129,318**	**100.0**

The Public Guardian and Trustee Regulations require that earnings be distributed quarterly. Earnings are distributed in accordance with sections 4 to 7 of the *Regulations*. These regulations can be found at **http://www.qp.gov.sk.ca/documents/english/Regulations/Regulations/p36-3r1.pdf**

Thus, distribution of earnings takes place after March 31, June 30, September 30 and December 31 of each year. Each distribution involves interest, dividends and capital gains or losses.

2006-07 Information

As of March 31, 2007, the Public Guardian and Trustee provided services to:

Adults where we are acting as property guardian	1,060
Adults where we review property guardians' accounting	302
Adults where we monitor property guardians	67
Adults where we have a notice of an interest in an estate	40
Adults where we are carrying out investigations	8
Adults where we are acting as litigation guardian	2
Children for whom we hold funds	2,107
Children whose property rights we may monitor	1,575
Estates where we have letters of administration	357
Estates where the value is less than $10,000	460
Estates where we are monitoring activities	19
Estates where we have notice of tax enforcement	39
Estates where we are acting as administrator ad litem	1
Estates where we have unclaimed funds	2
Estates where we act as trustee	4
Total	**6,043**

- As of March 31, 2007, the Office held assets in trust for clients in the amount of approximately $156 million.
- The annualized average rate of return realized for clients with money in the Common Fund for the 12 months ended March 31, 2007 was 7.16 per cent.
- The annualized rates of return over the past number of years are as follows:
  - The 4-year average was 5.85 per cent
  - The 5-year average was 4.71 per cent
  - The 10-year average was 7.88 per cent
  - The 15-year average was 8.89 per cent

2006-07 Planned Actions

- Propose a program of personal guardianship for the 2007-08 year and, if approved, begin to develop resource plans, financial plans, policies and procedures.
- Propose and promote amendments to *The Administration of Estates Act* and merge *The Crown Administration Act* and *The Devolution of Real Property Act* into *The Administration of Estates Act*.
- Propose and promote amendments to *The Trustee Act*.
- Work towards the provision of additional legal services in the Office, more particularly, a second lawyer on a permanent basis.
- Develop case law in the dependants' relief area and develop internal practices in relation to section 9 trusts and discretionary trusts.
- Develop case law with respect to distributing or administering an estate where not all beneficiaries can be located or ascertained.
- Introduce four releases of Guardian, the Office's computer system, with enhancements in the banking, work queue, assets, payments, incomes and reports areas.
- Provide electronic funds transfers (EFTs) so that all clients, service providers and income providers can use this service.
- Increase staff in the Estates unit to four Assistant Trust Officers to manage the increased demand for estate administration services, and propose staffing increases in the 2007-08 budget process.
- Formalize a file review process in the Children's unit to ensure proper allocation of funds and proper management of files.
- Develop policies and practices in relation to minors who are wards, and their money, property and legal claims.
- Develop policies and practices that ensure the Office is the property guardian of last resort and the Office assists family and others to take on the guardianship role.
- Conduct a privacy review.
- Plan and implement a move of the Public Guardian and Trustee (PGT) from 1871 Smith Street to 1840 Lorne Street, and plan and implement a move of the PGT from 1840 Lorne Street back to 1871 Smith Street.
- Plan and implement a renovation on the first floor of 1871 Smith Street.
- Evaluate the effectiveness of the investigation of financial abuse program and attempt to determine future demand and workload implications

Performance Measures and Targets

Quality of return rate on investments

- Per cent difference between the four-year average rate of return on client assets invested by the Office of Public Guardian and Trustee and the benchmark identified in the investment policy*

  Baseline: 0.5% (March 31, 2006)

  2006-07 target: 0.0%

  2006-07 year-to-date results achieved: 0.5%

* The goal is to meet or exceed the benchmark established in the investment policy. The benchmark is derived from a series of market indicators for investment returns. It is usually a positive number. This performance measure strives to meet the benchmark, which is, in effect, a very positive result.

2006-07 Activities and Results

- A program of personal guardianship was proposed, but no resources were allocated for such a program.
- The Office has proposed amendments to *The Administration of Estates Act* and Saskatchewan Justice has been consulting the public on amendments to this *Act*.
- The Office has proposed amendments to *The Trustee Act* and Saskatchewan Justice has been consulting the public on amendments to this *Act*.
- The Office has two lawyers providing legal services to approximately 6,000 clients or files.
- Internal practices have been developed for dependants' relief claims in the Office, but no reported cases occurred within the year. The Office's position on dependants' relief claims can be found later in this report.
- The Office continues to work on developing its position, practices and procedures when distributing a deceased estate where beneficiaries cannot be located or ascertained.
- Guardian, the Office's computer system, was enhanced by Release 7.0 – bank changes and security, bank reconciliation; and Release 7.1 – printing T3s, which were developed, tested and brought into production in the fiscal year. Work began on design and development of Release 7.2, which will enhance the Office's ability to detect potential duplicate payments. This release will be implemented in summer 2007.
- The Office has promoted service providers and clients being paid by the Office by electronic funds transfer, and currently 313 are paid this way.
- The number of deceased estate files continues to increase, and staff were added to this unit during the fiscal year.
- The Children's unit has implemented a file review process to ensure proper allocation of funds and management of files.
- The Office is the property guardian for all permanent wards and responsible for any financial or property issues the ward may have. The Office continues to work with others in government to ensure those interests are protected.
- The Office considers itself the property guardian of last resort and continues to promote, wherever possible, that family and friends be the property guardian provided adequate asset protection can be ensured.
- The Office promoted a culture of confidentiality and has a confidentiality policy, but did not carry out a privacy review in the fiscal year.
- The Office occupied temporary quarters for most of the fiscal year and will return to 1871 Smith Street in May 2007.
- The Office continues to investigate serious allegations of financial abuse and, where substantiated, attempts to take relevant action, including applying to the court to remove the property guardian. Although financial abuse is occurring in our society, the number of serious allegations brought to our attention is lower than expected.

2007-08 Planned Actions

- Propose and promote amendments to *The Administration of Estates Act* and merge *The Crown Administration Act* and *The Devolution of Real Property Act* into *The Administration of Estates Act*.
- Propose and promote amendments to *The Trustee Act*.
- Propose, promote and participate in the development of a *Co-ownership Act*.
- Propose, promote and participate in the development of amendments to *The Dependants' Relief Act*, *The Wills Act* and *The Intestate Succession Act*.
- Propose a program of personal guardianship.
- Work towards the provision of additional legal services in the Office, more particularly, a third lawyer to ensure children are represented in injury claims and other civil litigation.
- Develop case law in the dependants' relief area.
- Develop case law with respect to distributing or administering an estate where not all beneficiaries can be located or ascertained.
- Develop case law as to the property guardian's right to withdraw all funds from a joint bank account.
- Introduce three releases (8.0, 8.1 and 8.2) of Guardian with enhancements in the work queue, assets, payments, incomes, expenses and reports areas.
- Increase the number of staff in the Adults unit to two, to manage the increased workload, and propose staffing increases in the 2008-09 budget process.
- Develop policies and practices that ensure the Office is the property guardian of last resort, and propose and promote a service where the Public Guardian and Trustee assists applicants in their applications to court to be appointed property guardian.
- Update the Public Guardian and Trustee's web site, giving it a new look and ensuring additional information is given to the public, so that they understand the role of the Public Guardian and Trustee and are able to determine what they can do for themselves. Review and update all materials provided to the public.
- Partner with the Regina Qu'Appelle Health Region to deliver a conference on capacity in April 2008.

Important Issues

The purpose of a property guardian

People who are mentally incapable of handling their own finances are unable to look after their own welfare by looking after the basic financial transactions that adults normally carry out for themselves. They may be unable to do their own banking; look after day-to-day bills; buy personal items, food, shelter and services; collect payments to which they are entitled; or deal with assets they own, such as a house or investments. This makes them extremely vulnerable. It also affects other people such as dependants, service providers and those who own property together with the incapable person. The role of a property guardian is to step into the shoes of the incapable person for the purpose of financial decisions and transactions on the person's behalf. This serves to protect the welfare of the incapable person. It also indirectly benefits others whose own financial interests are connected to those of the incapable person.

This obligation is a very serious one. Almost every aspect of the incapable person's life is affected – directly or indirectly – by the guardian's actions. By performing the role diligently and sensitively, the guardian will give the incapable person the most comfortable, enjoyable and safe life that the incapable person can afford. On the other hand, extreme harm can result to the incapable person and others, if the guardian does not act diligently and honestly. Therefore, the highest standards of honesty, integrity and trust are demanded from the guardian.

Passing control of an incapable person's income and assets to a property guardian does not mean that the guardian assumes ownership of the income and assets. Ownership remains in the name of the incapable person. The property guardian is simply responsible for managing, in the best way possible, what the incapable person has.

Authority of a guardian

As a property guardian, you are allowed to do on the incapable person's behalf anything in relation to his or her property that the person could do if capable, except to make a will. For example, you are allowed to do the following on the incapable person's behalf:

- open and close bank accounts;
- redirect pensions and other income;
- apply for benefits or supplementary income to which the person is entitled;
- choose pension options;
- deal with investments;
- collect debts;
- pay bills;
- buy goods and services;
- start or defend law suits, if there are financial implications;
- sell, store or dispose of personal belongings; or
- maintain or sell a house or vehicle.

As a guardian, you are entitled to receive, from any person or business, information about the property that belongs to the incapable person and copies of any documents signed by, or given to, the incapable person.

A person who holds, or controls, the property is required by law to deliver the property to you when you require that person to do so. This situation will arise if you need control of the property for a decision that you make in the best interests of the incapable person. For example, you may need to obtain the contents of the incapable person's safety deposit box to look for valuable papers, like savings bonds or guaranteed investment certificates. You are entitled to obtain the person's will, if he/she has one. You should always do so.

Legal responsibilities of a guardian

- You must keep the incapable person's financial accounts and transactions completely separate from your own. You must never borrow or use the incapable person's money for yourself or your family and friends unless authorized by the court. You are only allowed a specific amount to compensate you for your work as a guardian.

- You must consider the personal comfort or well-being of the incapable person in determining whether any financial decision or transaction is for the incapable person's benefit. The most important goal in performing your role should be to maximize the quality of life of the incapable person.

- You must manage the property in a way that accommodates the decisions made about the incapable person's personal care. For example, if the person wants to live in a certain place and can afford it, it would be your duty to arrange to pay for this choice of residence. If the person wants to take a vacation and can afford it, it would be your duty to make arrangements to pay for it. However, there is one exception to this obligation. You may make a financial decision that overrides a personal care decision only if to do otherwise would result in negative consequences with respect to property that heavily outweigh the personal care benefits of the decision. For example, the person may want to remain living in his or her own house, but may require 24-hour care and not have enough money to pay for it without selling the house and moving to another residence. In that case, the need to sell the house in order to have enough money to pay for the person's care may heavily outweigh the person's wish to remain living in the house.

- It is your responsibility to try to inform the incapable person of all your powers and duties, to the extent that the person is able to understand.

- As the property guardian, you must encourage the incapable person to participate, to the best of his or her abilities, in your decisions about the property.

- You must discuss the financial decisions and transactions you make, from time to time, with family members and friends who are in regular contact with the incapable person and with people providing personal care (for example, nurses, doctors, support workers) to the incapable person. You must also foster personal contact between family members, caregivers, and the incapable person.

- You must make reasonable efforts to determine whether the incapable person has a will and, if so, what the will says. If the incapable person's will includes a gift of property, you must retain that property so that it may be gifted in accordance with the incapable person's will. You may need to depart from this rule if selling the property is absolutely necessary for you to fulfill your duties to the incapable person while he or she is alive.

Maintaining and passing accounts

Under the legislation, one of your main legal duties as the property guardian is to keep accounts of all transactions involving the property. You may be required to pass (submit) your accounts to the court for inspection in several circumstances. The Public Guardian and Trustee may apply to the court for an order requiring you to pass your accounts. As well, the incapable person, the incapable person's guardian or attorney for personal care, any of the incapable person's dependants, a creditor of the incapable person or anybody else, with the court's permission, may apply to the court for an order requiring you to pass your accounts. You may apply to the court for a passing of accounts as well, for several reasons, including questions regarding the amount of compensation that you are permitted to take. In an application for the passing of your accounts, the court may grant or adjust your compensation and discharge you as guardian, depending on the outcome.

It is, therefore, extremely important that you maintain your records and accounts. *The Adult Co-decision-making Regulations* Form L sets out the type of accountings that should be kept. These can be found at **http://www.qp.gov.sk.ca/documents/Forms/A5-3R1-L.pdf**

Property guardian accounting review

The Office requests and expects property guardians to file an annual accounting. The Office reviews those accountings to determine whether any actions have been inappropriate. The Office believes it is important to carefully review accountings received on behalf of dependent adults to ensure that the financial interests of the dependent adult are being properly dealt with. While the following list of items to consider is not meant to be exhaustive, these items should always be reviewed as they represent the typical problems that the Office finds with accountings.

- **Review the Order for guardianship**

  Does the Order have any specific terms with respect to the property and, if so, have these been followed? The Order may also set out terms with respect to compensation and legal fees which the property guardian is allowed to pay from the dependent adult's estate.

  Example: The Order may require that a particular property be sold. Has it been sold and did the adult receive the benefit?

- **Ownership of property**

  How is the adult's property held?
  Example: Joint tenancy, tenancy in common, adult as sole owner.

  In particular, review where property has been put into joint ownership with anyone, particularly the property guardian. If it has, why and when was this done? Did the other individual contribute to the purchase price of the asset? If so, how much did they contribute and why? Would that person be the dependent adult's beneficiary on death anyways? There may be no concerns where the dependent adult holds property jointly with a spouse or the property was put into joint ownership prior to the dependent adult's incompetency, but closer inspection is needed where property is held jointly with anyone other than a spouse. If the other person has contributed to the purchase price, ownership should be as tenants in common, not as joint tenants.

- **Loans to the property guardian from the dependent adult or loans to the dependent adult from the property guardian**

  Generally, loans to the property guardian will be a breach of the property guardian's fiduciary duty.

  The reason for a loan from the property guardian to an adult should be reviewed. If it was to protect an adult's asset (i.e., payment of outstanding property tax arrears to retain a dependent adult's real property), it may be appropriate. The property guardian should not be benefiting from the loan. Where such a loan was made, there should be proof that:

  - the property guardian is not benefiting personally (i.e., high interest, fees, etc.);
  - the terms of the loan are documented – amount to be loaned, repayment; and
  - a careful record of all repayments is being kept.

- **Mixing of funds**

  What bank accounts are held, in whose name are they, and how are funds being dealt with? Funds should not be flowing between the adult's bank accounts and the property guardian's personal bank accounts. Even if this is being done solely for banking convenience, it creates difficulties in tracing funds for accounting and increases the possibility of misuse of trust funds.

- **Investments**

  What are they and are they reasonable given the dependent adult's situation and assets? Would they comply with the provisions of section 3 of *The Trustee Act?* Examples of improper investments that the Office has seen in accounts provided to our office include: investments in a business run by the property guardian; investments in second mortgages; investments in high risk stocks, etc.

  Also of concern would be a failure to invest. Example: All of dependent adult's assets in a sizeable amount put into a bank account earning no interest.

- **Unusual transactions**

  Are explanations provided for any large or unusual receipts or payments?

- **Change in net worth of the adult**

  What is the change and why has it occurred? The reasons of any substantial change should be reviewed, including increases in net worth.

- **Compensation being claimed by the property guardian**

  How much is being claimed and why? Was compensation allowed by the Order and, if so, is the amount being claimed correct? If compensation is not allowed in the Order, the property guardian should obtain court approval of the compensation claimed.

- **Assets**

  What are the assets of the dependent adult? Is value being maintained? Have assets changed since previous accounting or original application? If so, why?

  For example, if an asset is sold, did the dependent adult receive the proceeds of the sale, was it sold at fair market value, who purchased it, etc.? If the property guardian purchased the asset, careful scrutiny should be given to ensure that fair market value was received.

  If assets are purchased for the dependent adult, does the purchase appear to be reasonable – i.e., will the dependent adult use the asset; can the dependent adult afford the asset? Example: Purchase of a vacation property for the dependent adult.

- **Bank statements**

  If an accounting statement and receipts/bank statements/income tax returns are provided, do the figures match? Are there any significant discrepancies? What is the explanation for those? If bank statements have not been provided, consider whether there are any issues in the accounting which would require that the bank statements be requested.

- **Gifts**

  Are any gifts made? To whom and how much? Small amounts for Christmas/birthday presents to immediate family members are not likely to be of concern, unless the dependent adult cannot afford them. However, any gift of a larger amount (depending on the assets of the dependent adult) should be scrutinized. The property guardian should not be providing gifts from the dependent adult to him/herself.

- **Income**

  Have there been any significant changes to the dependent adult's income (increases and decreases). If so, why? Is the explanation reasonable?

  Example: If the dependent adult was receiving income from Child Tax Credit and this ceases, what is the explanation – is it failure by the property guardian to have applied for the credit or is the dependent adult no longer entitled?

- **Expenses**

  Have there been any significant changes to the dependent adult's monthly expenses (increases or decreases). If so, why? Is the explanation reasonable?

- **Bond**

  Is the bond provided by the property guardian still sufficient to protect the assets of the dependent adult or have assets increased significantly such that the Office should be requesting an increase to the bond?

- **Other issues**

  The above items are not meant to be exhaustive and there may be other issues of concern raised either by the accounting or the particular circumstances of the dependent adult. If there are any items that the Office believes require further clarification or explanation or any items that might be missing, the Office will ask the property guardian for further information.

Security, conflict of interest and bankruptcy of property guardians

The Adult Guardianship and Co-decision-making Act requires that all property guardians furnish security in the form of a bond equal to the value of the vulnerable person's estate. Security is a way to protect the estate of a vulnerable adult. It offers some assurance that the vulnerable adult will be able to recoup some of the value of the estate should anything happen to the estate.

The Public Guardian and Trustee views the provision of security as an essential part of adult guardianship, and has had good success in convincing the courts and lawyers that security should be provided in most cases. The Office now requests bonds on most property guardianship applications. In many cases, a personal bond will be acceptable. Sometimes the applicant requires one or two sureties. Occasionally, the applicant requires a commercial bond. In reviewing applications for property guardians, the Public Guardian and Trustee has observed that applicants apply for property guardianship when they have a conflict of interest in relation to the adult's financial affairs. A conflict of interest can be defined as a situation where if one makes a decision regarding someone else's property, he or she will benefit or lose financially, depending on what that decision is.

It is not advisable that a person be appointed property guardian for an adult if there exists a notable conflict of interest. Where the Public Guardian and Trustee detects such conflict, it will advise the applicant or the applicant's lawyer of the existence of the conflict. The Office will encourage the applicant to resolve the conflict before proceeding further with the application. If the applicant continues with the application in the face of the conflict, the Office will advise the court of that conflict of interest.

The Public Guardian and Trustee has also noted that individuals who have declared or been petitioned into bankruptcy are applying for property guardianship. Subsection 39(f)(vi) of *The Adult Guardianship and Co-decision-making Act* requires the court to inquire into the suitability of the applicant and can take into account the applicant's history in relation to bankruptcy. The Public Guardian and Trustee will point out to the court the fact that the applicant was bankrupt or is in the process of being discharged from bankruptcy. In some instances, the Office will recommend against appointment of the applicant.

Security for property guardians of minors

The Children's Law Act requires that, before a property guardian has authority to receive and administer funds on behalf of a child, security must be furnished or the court must dispense with the need for security.

This is a way to protect the estate of the child and offers some assurance that the child will be able to recoup some of the value of the estate, should anything happen to the estate.

The Public Guardian and Trustee views the provision of security as an essential part of property guardianship for children, and will not usually consent to an order dispensing with the need for security.

Sections 40.5 to 40.9 of *The Public Guardian and Trustee Act*

On February 1, 2005, sections 40.5 to 40.9 of *The Public Guardian and Trustee Act* came into force. These sections deal with financial abuse of vulnerable persons. They can be viewed at **http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/p36-3.pdf**

It is important to note that subsection 40.5(2) allows a financial institution to suspend the withdrawal or payment of funds from a person's account for up to five business days, where the financial institution has reasonable grounds to believe that the person is a vulnerable adult and is being subjected to financial abuse. If a financial institution does so, it is to advise the Public Guardian and Trustee.

Subsection 40.6(1) allows the Public Guardian and Trustee to require a financial institution to suspend the withdrawal or payment of funds from the person's account for up to 30 days, where the Public Guardian and Trustee has reasonable grounds to believe that the person is a vulnerable adult and the Public Guardian and Trustee has received an allegation that the person is being subjected to financial abuse.

Section 40.7 allows the Public Guardian and Trustee to investigate an allegation that a vulnerable person is being subjected to financial abuse.

When dealing with a client who is vulnerable, concerned citizens now have the options of:

- contacting the client's financial institution and requesting that they consider freezing the client's accounts;
- contacting the Public Guardian and Trustee and requesting that the Office freeze accounts at a financial institution; and
- contacting the Public Guardian and Trustee and requesting that the Office carry out an investigation.

In making these requests, it is necessary to provide some evidence of mental incapacity, particulars of financial institutions and accounts, details regarding the family and those potentially abusing the client, and the estimated length and amount of the financial abuse.

Section 56.1 of *The Adult Guardianship and Co-decision-making Act*

Section 56.1 of *The Adult Guardianship and Co-decision-making Act, 2005* aims to ensure protection of vulnerable people who may be taken advantage of prior to their coming under guardianship.

This section affects legal proceedings respecting contracts entered into by adults for whom property guardians had been appointed within a year after the execution of the contracts. The amendment provides that, in cases where questions of what the other party to the contract knew about the adult's capacity arise, that other party would have the onus to show that he or she did not have reasonable grounds to believe the adult lacked capacity at the time of the contract.

This section will assist those representing property guardians to deal with contracts recently entered into.

Applications for personal guardianship

Sections 11.1 and 11.2 and section 7(1) of *The Adult Guardianship and Co-decision-making Act* require that an application for personal guardianship is to be served on the Public Guardian and Trustee. The Public Guardian and Trustee reviews the application, contacts the adult if appropriate, engages a lawyer if appropriate, and makes representations to the court if necessary.

Sections 11.1 and 11.2 impose the same requirements on the Public Guardian and Trustee for personal guardianship applications, as do sections 36 and 37 for property guardianship.

Duties and powers of a power of attorney

The powers and duties of an attorney are established by law. *The Powers of Attorney Act* and the *Regulations* under that *Act* set out these powers and duties.

The purpose of an attorney

People who are growing older may be unable to look after their basic financial transactions. They may be unable to do their own banking; look after day-to-day bills; buy personal items, food, shelter and services; collect payments to which they are entitled; or deal with assets they own, such as a house or investments. This makes them extremely vulnerable. It also affects other people such as dependants, service providers and those who own property together with the grantor. The role of an attorney is to step into the shoes of the grantor for the purpose of financial decisions and transactions on the person's behalf. This serves to protect the welfare of the grantor. It also indirectly benefits others whose own financial interests are connected to those of the grantor.

This obligation is a very serious one. Almost every aspect of the grantor's life is affected – directly or indirectly – by the attorney's actions. By performing the role diligently and sensitively, the attorney will give the grantor the most comfortable, enjoyable and safe life that the grantor can afford. On the other hand, extreme harm can result to the grantor and others if the attorney does not act diligently and honestly. Therefore, the highest standards of honesty, integrity and trust are demanded from the attorney.

Passing control of a grantor's income and assets to an attorney does not mean that the attorney assumes ownership of the income and assets. Ownership remains in the name of the grantor. The attorney is simply responsible for managing, in the best way possible, what the grantor has.

Authority of an attorney

As an attorney, you are allowed to do on the grantor's behalf anything in relation to his or her property that the person could do if capable, except to make a will. Unless the power of attorney restricts you, you are allowed to do the following on the grantor's behalf:

- open and close bank accounts;
- redirect pensions and other income;
- apply for benefits or supplementary income to which the person is entitled;
- choose pension options;
- deal with investments;
- collect debts;
- pay bills;
- buy goods and services;
- start or defend law suits;
- sell, store or dispose of personal belongings, and
- maintain or sell a house or vehicle.

You are entitled to receive, from any person or business, information about the property that belongs to the grantor and copies of any documents signed by, or given to, the grantor.

A person who holds, or controls, the property is required by law to deliver the property to you when you require that person to do so. This situation will arise if you need control of the property for a decision that you make in the best interests of the grantor. For example, you may need to obtain the contents of the grantor's safety deposit box to look for valuable papers, like savings bonds or guaranteed investment certificates. You are entitled to obtain the person's will, if they have one, and it is recommended that you do obtain a copy.

You do not have the authority to change a person's will or make a new will for the grantor.

Legal responsibilities of an attorney

- You must keep the grantor's financial accounts and transactions completely separate from your own. You must never borrow or use the grantor's money for yourself or your family and friends unless authorized by the power of attorney. You are only allowed a reasonable amount to compensate you for your work as an attorney. If you do charge a fee, then you must prepare annual accountings and provide a copy to the grantor.
- You must consider the personal comfort or well-being of the grantor in determining whether any financial decision or transaction is for the grantor's benefit. The most important goal in performing your role is to maximize the quality of life of the grantor.
- You must manage the property in a way that accommodates the decisions made about the grantor's personal care. For example, if the person wants to live in a certain place and can afford it, it would be your duty to arrange to pay for this choice of residence. If the person wants to take a vacation and can afford it, it would be your duty to make arrangements to pay for it. However, there is one exception to this obligation. You may make a financial decision that overrides a personal care decision only if to do otherwise would result in negative consequences with respect to property that heavily outweigh the personal care benefits of the decision. For example, the person may want to remain living in his or her own house, but may require 24-hour care and not have enough money to pay for it without selling the house and moving to another residence. In that case, the need to sell the house in order to have enough money to pay for the person's care may heavily outweigh the person's wish to remain living in the house.
- It is your responsibility to try to inform the grantor of all your decisions and actions, to the extent that the person is able to understand.
- As the attorney, you should encourage the grantor to participate, to the best of his or her abilities, in your decisions about the property.

- You must discuss the financial decisions and transactions you make, from time to time, with family members and friends who are in regular contact with the grantor and people providing personal care (for example, nurses, doctors, support workers) to the grantor. You must also foster personal contact between family members, caregivers, and the grantor.

- You must make reasonable efforts to determine whether the grantor has a will and, if so, what the will says. If the grantor's will includes a gift of property, you should retain that property so that it may be gifted in accordance with the grantor's will. You may need to depart from this rule if selling the property is absolutely necessary for you to fulfill your duties to the grantor while he or she is alive.

Criminal Code of Canada

Attorneys are not free to act without being aware that there are criminal code offences that apply to the conduct of attorneys.

The offence of theft can apply where a person takes property without color of right. (Section 322)

Everyone commits theft who, being entrusted with a power of attorney for the sale, disposition of property, fraudulently sells or disposes of the property or converts the proceeds, to a purpose other than that authorized in the power of attorney. (Section 331)

Everyone who, being a trustee of anything, converts it in contravention of the trust, converts it to a use not authorized by the trust, is guilty of an offence. (Section 336)

Expenses, income and accountings

As attorney, you will receive income and make payments on behalf of the grantor. You may be required to account for your actions and decisions by the grantor, a family member named in the power of attorney, the Public Guardian and Trustee or the court.

The Dependants' Relief Act, 1996

Our Office receives many calls from lawyers regarding *The Dependants' Relief Act, 1996* (*Act*) and its application.

Application for administration

In the application for probate or administration, Rule 699(2) of *The Queen's Bench Rules* requires the applicant to specify those who are dependent adults. The definition of "dependent adult" in Rule 689(b), in effect, requires the lawyer to list dependent adults who have a disability and who have a property guardian. We suggest that the notice should specify anyone who is a dependent adult, whether he or she has a property guardian or not.

Dependants' relief claim

When this Office receives a notice that shows a dependent adult without a property guardian, our Office will write the estate lawyer and indicate that the dependent adult may have a dependants' relief claim and may need to be represented. We request the estate lawyer to assist us in getting the person represented by a property guardian or litigation guardian. The Public Guardian and Trustee will not represent the person unless it has the authority either as property guardian or as litigation guardian. The first preference is for a family member, with no conflict of interest, to be the property guardian or litigation guardian. Failing this, the Public Guardian and Trustee will attempt to become appointed as property guardian or litigation guardian.

If the Public Guardian and Trustee is not a property guardian or litigation guardian, the Public Guardian and Trustee will not negotiate a settlement because it has no authority to act on behalf of the dependent adult until appointed. Also, at the early stages, the Public Guardian and Trustee does not have all the facts to formulate an opinion as to what would be a reasonable settlement.

If a property guardian has already been appointed, the property guardian should not act if a conflict of interest exists. In those circumstances, a litigation guardian needs to be appointed.

If appointed, the Office will apply the following policies:

- If the testator has gifted all or substantially all of the estate to his or her adult children, then the dependent adult should, at minimum, receive an equal share with his or her siblings.

- The *Act* and case law indicate that a dependent adult's needs are critical in determining an award or settlement. If the estate is over $100,000, we will engage a qualified health professional (possibly an occupational therapist) to conduct a needs assessment. We will also then attempt to obtain a report on present value for the future costs of care. The Public Guardian and Trustee will ask the executor or administrator to pay for both reports. Unless the needs assessment supports a larger claim, the minimum claim will be a share equal to what other brothers and sisters are receiving under the will. If the needs assessment is higher, then the higher amount will be claimed.

- The *Act* and case law also enumerate other factors to be considered in quantifying a claim and, where applicable, these factors would also receive consideration (See for example, section 8 of the *Act*).

- If the estate is under $100,000, the dependent adult should receive an equal share with his or her siblings. If the will provides less than an equal share, we will claim an amount that results in an equal share to the dependent adult.

- If the dependent adult is the only child of the deceased parent and the will provides others with a share of the estate, our Office will employ a needs-based test to determine the adequacy of the dependent adult's bequest. This approach will also be used where the testator has disinherited the adult children.

- Once a settlement is reached, attempts will be made to put the funds in a section 9 trust under the *Act* (current limit by regulation is $100,000), with our Office as trustee. The purpose of a section 9 trust fund is to enhance the dependent adult's quality of life without affecting his or her entitlement to social assistance. Upon the dependent adult's death, the residual beneficiaries of the trust are the same people who would take under the will or *Intestate Succession Act*.

If the settlement exceeds $100,000 and a discretionary trust also exists under the will, the excess will be placed in the discretionary trust. The Public Guardian and Trustee will be the trustee under the section 9 trust and the executor/trustee will be the trustee under the discretionary trust. The variation of the discretionary trust may be accomplished by agreement or possibly an application under *The Variation of Trusts Act*. Consent orders will be required under *The Dependants' Relief Act, 1990* and *The Variation of Trusts Act*. Of course, all consent orders are subject to the approval of the court.

Drafting wills

When drafting a will for parents who have a dependent adult with a disability, it is necessary to consider the following:

- Is the dependent adult receiving an equal share under the will similar to the other siblings?

- Will the dependent adult's share meet his or her needs for his or her expected lifetime?

- Can his or her share be set up in a discretionary trust so that it is protected from financial abuse?

The Office encourages the use of discretionary trusts. These trusts are not limited to the $100,000 cap, as is required for section 9 trusts. A discretionary trust can be for any amount. Case law indicates that social assistance payments cannot be reduced because of the existence of a discretionary trust. If the executor/trustee will have a perceived conflict, then someone else should be appointed trustee of the discretionary trust.

Approval of injury and fatal accident claims on behalf of minors

Section 25 of *The Public Guardian and Trustee Act* provides the authority for the Public Guardian and Trustee to approve a settlement reached on behalf of a child, to release a defendant, and to receive the net settlement proceeds on behalf of a child. This authority is limited to claims for injuries suffered by the child and claims made under *The Fatal Accidents Act*. Other types of claims require the approval of the court.

The Public Guardian and Trustee will accept a request to approve a settlement from the child, the child's parent and/or litigation guardian, or the child's solicitor.

Unless there are extremely unusual circumstances, the Public Guardian and Trustee will not accept a request to approve a settlement if that request is from the defendant, the defendant's solicitor or the defendant's insurer. In these rare circumstances, the Public Guardian and Trustee will contact the parents, the child, and/or their solicitor to ensure that they are aware of, and in agreement with, the proposed settlement.

The Public Guardian and Trustee has developed forms that outline the information required when asked to approve a settlement. These forms are available on request.

In order to approve the settlement of an injury claim, the Public Guardian and Trustee must be satisfied that the settlement is fair and reasonable and in the best interest of the child.

Consideration is given to a number of factors, including:

- nature and extent of the injury;
- type of treatment required;
- activities curtailed or losses suffered during the period of disability;
- extent of permanent impairment, if any;
- effect on lifestyle and earning capacity;
- cost of future care or treatment; and
- contributory negligence.

The Public Guardian and Trustee may be asked to approve an arrangement where the net settlement proceeds are used to purchase an annuity that will provide periodic payments, rather than being paid in one lump sum to the Public Guardian and Trustee.

Consideration will be given to a request for a structured settlement if it can be shown that the nature of the injuries are such that the child will require care for the rest of his or her life, and that there will be a cost for the care (i.e., a severe head injury or an injury resulting in quadriplegia or paraplegia). In these circumstances, a structured settlement provides the best guarantee that the ongoing costs of the child's care will be met and also has income tax advantages.

The Public Guardian and Trustee must approve of the proposed structure, including the amount and frequency of the payments, the details of any lump sum payments and the length of time that the payments are guaranteed to continue.

If a request is received to approve a structured settlement for a child whose injuries do not result in the need for life-long care, and the purpose of the structured settlement is simply to delay payment of the settlement proceeds to the child, the Public Guardian and Trustee will not approve the request.

In some cases, the plaintiff's solicitor may ask the Public Guardian and Trustee to approve a settlement of a matter that has already gone to pre-trial. In these cases, it is the Public Guardian and Trustee's position that, since the pre-trial judge would have already reviewed the materials and heard from the parties, it would likely be more expeditious for the approval of the settlement to be dealt with by way of an application to the pre-trial judge.

In these cases, the Public Guardian and Trustee will not approve the settlement and the plaintiff's solicitor should seek the approval of the court, pursuant to section 25(3) of *The Public Guardian and Trustee Act*. This section directs that the Public Guardian and Trustee is to be served with the application.

Section 26 of *The Public Guardian and Trustee Act* provides the authority for the Public Guardian and Trustee to approve solicitor's fees in connection with the approval of an injury or fatal accident claim on behalf of a child.

It is the policy of the Office to approve fees at 15 per cent of the settlement amount if the matter is settled prior to pre-trial, 20 per cent if the matter is settled at pre-trial, and 25 per cent if the matter

goes to trial. Fees at these rates will be approved on request. If the Public Guardian and Trustee is asked to approve fees at rates higher than outlined above, consideration will be given to the following:

- nature and complexity of the case (i.e., medical malpractice or multiple defendants);
- actual time spent by the lawyer;
- skill and ability displayed by the lawyer;
- whether the lawyer carried the disbursements or spent a lot of time on the file with a minimal possibility of success; and
- results achieved.

The fee must be both fair and reasonable, and the actual compensation must be commensurate with the work done. It would be exceptional for the fees to exceed 30 per cent, and 15 to 25 per cent is most common.

Contingency fee arrangements entered into by a parent or litigation guardian are not binding on the child, and the Public Guardian and Trustee can not pre-approve them or enter into a binding agreement on behalf of a child.

Statutory benefits

The Public Guardian and Trustee may be asked to approve fees for legal services performed to obtain benefits, such as SGI Death Benefits or Permanent Impairment Benefits for a child. As these benefits are statutory, the Public Guardian and Trustee would not normally approve payment of these legal fees, unless there are special circumstances.

Consideration will be given to the following:

- Were there special circumstances that would indicate that legal assistance was required (i.e., are there communication or literacy problems, did SGI fail to assist the parent with the application, deny paternity, fail to accept the stated income of the deceased, etc.)?
- Was there an added value as a result of the engagement of a solicitor (i.e., did the solicitor's work result in the payment of a benefit that would not have otherwise been paid, or a larger benefit that would have been paid)?
- Are the parents in agreement with the proposed account?
- Is the child (if 14 or older) in agreement with the proposed account?

Consideration will not be given to approval of an account that is represented as a percentage of the amount paid to the child, but consideration may be given to approval of an account that is for a reasonable amount of time. A detailed breakdown of the work performed, the time spent and the solicitor's hourly rate should be provided to the Public Guardian and Trustee.

Removal of property guardians for cause

As our population ages, more individuals are likely to require assistance from a property guardian. In Saskatchewan, *The Adult Guardianship and Co-decision-making Act*, S.S. 2000, c.A-5.3, governs the appointment of property guardians for adults who no longer have the capacity to make decisions with respect to their property and sets out the powers and duties of a property guardian. A property guardian acts as a fiduciary and owes a duty of good faith to the adult for whom they are property guardian. As in all areas of life, however, where someone is in a position of trust, there is the potential for abuse of that position. Areas of common concern to the Public Guardian and Trustee's Office include: the making of improper gifts, failure to provide an accounting, improper taking of fees and improper choice of investments.

In a recent case, the Public Guardian and Trustee sought to remove the property guardian for several reasons, including: improperly investing the adult's assets, making improper gifts to relatives of the adult, failing to provide an accounting to the Public Guardian and Trustee, and improper taking of fees. The property guardian was appointed as property guardian for the adult in 2003. As part of his application to be appointed, the property guardian had indicated that he intended not to take any fees for his work as property guardian. After being appointed as property guardian, the adult's real property was sold and the property guardian paid to himself $13,000 in fees and commissions relating to the sale. The household goods were gifted to family members. The property guardian took most of the funds from the sale and opened

a brokerage account. The brokerage account contained seven investments. Between 2003 and the bringing of the application, the investments had decreased in value by 30 per cent. Despite repeated requests for an accounting from the Public Guardian and Trustee, the property guardian failed to provide an adequate annual accounting until the application was commenced.

The court found that with respect to making investments, a property guardian is governed by *The Trustee Act*, S.S. 1978, c.T-23. Section 3.2 of *The Trustee Act* obligates the trustee to diversify the investments. The court found that this means "diversification within traditional asset classes of bonds, stocks and cash having regard to the factors listed in s.3(3) of *The Trustee Act* including the need to preserve capital and ensure regularity of income to satisfy the requirements of the beneficiary." Here, the choice of high-risk, speculative investments could not be justified. The court stated, at paragraph 35, that the property guardian's "first priority should have been to provide her with necessities and to improve and enhance the quality of her life."

The court further looked at the issue of improper taking of fees. In this instance, despite having advised the court in his application that no fees would be taken, the property guardian had charged $6,000 for improving the house in preparation for sale, a further $6,000 "finder's fee" and a $1,575 "service fee" for arranging the sale of the house. The court found that he was not entitled, pursuant to the terms of the particular order, to take fees. In taking the fees, the court found that he had acted in his own self-interest and had breached his fiduciary responsibilities.

While the court found that the property guardian had not intended to act dishonestly, his actions in taking the fees, failing to account and in making poor investment decisions had so endangered the well-being of the estate of the adult that he was unsuitable to act as property guardian. The court did not base its decision on any one factor, but found that the circumstances, as a whole, justified the removal of the property guardian as property guardian. The court did, however, note that the decision was not made based on the gift of personal household gifts to family members, as the property guardian did not receive any personal benefit from their disposition and he had disclosed his intention to make these gifts of property when he applied for appointment as property guardian.

Lessons to be learned:

- If a property guardian intends to take fees for his/her duties, which is permitted by *The Adult Guardianship and Co-decision-making Act*, this issue should be addressed in the Order appointing them as property guardian. If the property guardian initially advises the court that no fees will be taken, which is not uncommon when family members choose to look after the dependent adult, then they must realize that even if circumstances change, no fees should be taken without obtaining court approval.

- *The Adult Guardianship and Co-decision-making Act* now requires that the property guardian provide an annual accounting to the Public Guardian and Trustee and to the court. Typically, the requirement to provide an accounting is also included as a term of the Order. Property guardians should be advised that this is an obligation which they should not take lightly. Accountings should be provided to our Office on a regular basis, preferably on the anniversary date of the Order. Our Office currently expects that annual accountings be provided no later than 60 days from the anniversary date.

- While *The Adult Guardianship and Co-decision-making Act* does not preclude a property guardian from making gifts on behalf of the adult, doing so should be done with caution. The property guardian must keep in mind that, as a fiduciary, he or she may not personally benefit from the estate. If the property guardian thinks it is appropriate to make an unusual gift (i.e., a large sum or a gift which might benefit the property guardian), then court approval should be sought.

- The property guardian should ensure that all investments of the adult's property are made in accordance with *The Trustee Act*. Care should be taken to ensure that the assets are properly diversified. Assets should be invested with the goal of preserving capital and ensuring regularity of income for the benefit of the adult.

The Public Guardian and Trustee has prepared a document entitled, "Duties and Powers of a Property Guardian."

Trends and Issues

Aging population

Saskatchewan's population is aging. According to the 2001 Census, more than one in eight of Saskatchewan's citizens were 65 or older. The population 65 and older will continue to increase as the baby boomer generation matures, potentially to greater than one in six Saskatchewan people by 2016. Meanwhile, the number of those over 80 (the citizens with the greatest need for guardianship and estate management) has increased even more dramatically.

It is difficult to predict, but our aging population will probably result in the Public Guardian and Trustee being appointed as property guardian for more and more senior citizens. Seniors may also live longer under guardianship. The workload of the Office, and hence the need for additional resources and for qualified staff, will increase as a result. At the same time, the Office's ability to meet its fiduciary and other obligations for each and every file and for every decision will be stretched.

Increasing Aboriginal population

The proportion of the population that is Aboriginal will increase dramatically over the next 10 to 20 years. According to some projections, persons of Aboriginal ancestry could represent as much as 20 per cent of the provincial population by 2018. In addition, the off-reserve Aboriginal population is growing at a faster rate than the on-reserve population.

The off-reserve Aboriginal vulnerable adult population may have unique estate needs and issues. The Public Guardian and Trustee may need to develop policies that deal with these special needs and circumstances.

Abuse of senior citizens

If you talk to doctors, lawyers, police officers, nurses, psychologists, social workers and other human service providers, they will probably be able to tell you of at least one case of physical, mental or financial abuse of a senior citizen. Physical and sexual abuses are obviously very serious, but financial abuse can be just as harmful to a senior citizen.

There are no definitive statistics on its occurrence, but various studies have shown that between one and 2.5 per cent of senior citizens are financially abused in Canada every year. This means that there may be many cases of financial abuse of seniors in Saskatchewan in any given year.

Financial abuse results in lost savings. It can mean that a nest egg set aside for retirement is gone. Once this occurs, it is difficult to get the lost property or money back. The Public Guardian and Trustee will take all the steps possible to develop actions to restore senior citizens to their original financial position.

The Legislative Assembly has passed an amendment to *The Adult Guardianship and Co-decision-making Act* that would create a presumption for all financial and property transactions done within one year prior to a vulnerable person's coming under property guardianship. The presumption will place the onus on the other party to prove that he or she reasonably believed the vulnerable person was capable. Such a presumption will ensure the protection of vulnerable people, who are likely suffering some form of incapacity before they come under guardianship, while allowing legitimate transactions to go ahead.

Joint ownership

Many people in Saskatchewan place property in joint names as part of estate planning. They want to reduce their estate costs when they die.

The problem with joint tenancy is that both joint tenants can do anything they want with the property, short of selling it. A son or daughter may put their parent in a home and then rent out the jointly-held property for their own profit. If it is a bank account, one joint owner may withdraw most or all of the funds from the account.

In most instances, joint tenants have a right of survivorship, so that the last surviving joint tenant takes it all. One child who is in a joint tenancy with his or her parent may become the sole heir, supplanting any other children and potentially the wishes of the parent, or a bank account set up for the convenience of an older person may result in the surviving joint owner taking the entire contents of the account on the older person's death. Senior citizens should be extremely cautious about

placing property in joint names with the right of survivorship. Where the senior is using joint tenancy for convenience or to reduce estate costs, they should insist upon the other joint owner signing a Declaration of Trust. There is a need to educate senior citizens, bankers, accountants, social workers and police officers on the dangers of joint bank accounts and the importance of a Declaration of Trust.

The Public Guardian and Trustee is proposing a comprehensive review of the law of co-ownership in the province, so that legislation could be formulated that would better protect vulnerable adults or others from abuse connected with joint tenancy.

The Wills Act, 1997

This *Act* has not been updated or reviewed for a long time. Amendments were made in August 1997. The British Columbia Law Institute has done an extensive review of British Columbia's legislation and has made a number of recommendations. Their report can be found at **http://www.bcli.org/pages/projects/succession/Wills_Estates_and_Succession_Report.pdf**

The Wills Act, since it affects many Saskatchewan citizens, could only be updated after an extensive consultation process. This process may take as much as two years from start until legislation was passed. We do not have to follow the British Columbia Law Institute recommendations, but their comments give us a lot of food for thought.

Some of the issues that should be considered, discussed, and, if agreed to, put into legislation are the following:

- Should a will be revoked upon marriage? Now, living together for two years, results in one being a spouse. This two-year limit triggers a revocation of a will. This could happen to a person without them giving it conscious thought.
- Review of the formal requirements for execution and our rules where there has not been compliance.
- Do we still require special wills like the military will? Should the age at which a person can make a will be changed to 16?
- Should section 37 be amended to allow electronic wills to be included in the definition of writing?
- Should a will be revoked upon the subsequent marriage of a person?
- Should *The Wills Act* have a provision that would allow an application for rectification and should there be a time limit within which one must bring his or her application?
- Should the rules for determining intent of the testator be amended to allow extrinsic evidence?
- Should *The Wills Act* have a provision that provides that gifts to issue are to be distributed per stirpes to make it consistent with intestate succession?
- Should certain non-statutory presumptions be reviewed and, if necessary, changed or eliminated?
- Should section 35 of the *Act* be extended to encumbered personal property?
- Should the rules relating to lapsed gifts be amended so as to prevent intestacy?
- Should the rules on ademption be amended?
- Should the rules relating to abatement be amended?

The Intestate Succession Act, 1996

Similarly, this *Act* has not been extensively reviewed for a long time. The last amendments were November 1996. Comments of the Public Guardian and Trustee about *The Wills Act* apply to this *Act* as well. Some issues that should be considered are:

- Should the imposed distribution scheme be changed?
- At present, our *Intestate Succession Act* distributes an intestate's estate according to degrees of consanguinity or kinship. The British Columbia Report has proposed to move towards

a parenthetic system of distribution under which "the line of the closest common ancestor must be exhausted before other relatives will share in the estate, subject to the rights of the intestate's surviving spouse." Which would be the better system for Saskatchewan?

- Is the spouse's share in the *Act* appropriate or should it be increased? Should there be a different amount given to the spouse where there is a mixed family? What should the rights on intestacy be for separated spouses?

The Dependants Relief Act, 1996

This *Act* has not been reviewed since February 1997. Comments about *The Wills Act, 1997* also apply here. Some issues requiring consideration are:

- Should the definition of "estate" or the assets that a court order can affect be expanded to include insurance policies? Some provinces such as Alberta already provide for this.
- Should the definition of assets caught by the *Act* be expanded as it has been in other provinces?
- Should we have a provision that assets transferred within the year prior to death are subject to an order for maintenance?

Other legal changes

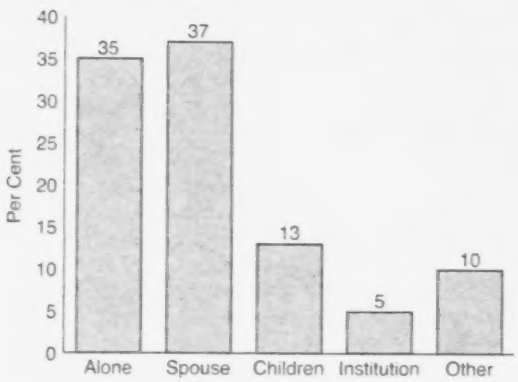
Over the next few years, a number of areas of the law relating to estates and estate management need to be changed in Saskatchewan. The law of trusts is being reviewed and the law relating to administration of estates needs to be updated.

The proposed amendments to the law of trusts could have a potential impact on the Public Guardian and Trustee. Changes to the law of administration of estates could increase the workload of the Office.

Living in the community

Only five per cent of seniors in Canada lived in institutions in 2001 (see Figure 1). Thirty-five per cent of seniors lived alone in a domestic setting, 37 per cent with a spouse and 13 per cent with children. The number of seniors with serious and chronic health conditions living in institutions may rise, however, in the near future. The majority of persons with disabilities also now live in the community.

Figure 1: Living Arrangements of Canadian Seniors – 2001 Census



Source: Statistics Canada, 2001 Census

Many of the Public Guardian and Trustee's clients, therefore, live in the community. This increases the need for personal guardians to assist vulnerable adults with personal decisions, and to be aware of the personalized needs of each client and seek ways to preserve their independence.

A need for information

At present, other human service providers, professionals and the public at large require more information on issues affecting vulnerable adults. This affects their ability to respond to certain issues, such as the abuse of senior citizens or problems associated with joint ownership. These people generally do want to know more, in order to improve their responses.

The Public Guardian and Trustee will work in conjunction with other government and community organizations to continue to provide information to interested professionals and the public.

Client personal information

The Public Guardian and Trustee is required to account publicly to the Minister and the Legislative Assembly as evidenced by this Annual Report. The Public Guardian and Trustee is required to have an audit performed by the Provincial Auditor each year. This audit reviews financial information, but also involves a review of systems and controls. The Office is subject to all financial controls of the Comptroller's Office and the accounting requirements of the Department of Justice. Citizens have the right to contact the Ombudsman who has the authority to do a review of a file. Finally, at some point, the Office must always account to a client, his or her property guardian, executor or administrator.

The Public Guardian and Trustee has been in existence since April 1984. The Office and its predecessor, the Administrator of Estates, have always taken the issue of privacy and confidentiality very seriously. As the Office administers the financial affairs of a person, we believe that person is entitled to as much privacy as they had when they were managing their own affairs. When they were managing their own affairs, they had the discretion to disclose what information they wished; when the Office administers their affairs, the Office will always err on the side of disclosing less information rather than more, so that the person's privacy is guarded.

The Freedom of Information and Protection of Privacy Act reinforces this principle in section 29, which provides as follows:

> **29**(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.
> (2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:
> ..... (list of exceptions)

The Health Information Protection Act further enforces this principle in section 5(2):

> **5**(2) A trustee shall use or disclose personal health information about an individual only:
>
> (a) with the consent of the subject individual; or
> (b) in accordance with a provision of this Act that authorizes the use or disclosure.

To further reinforce this long-standing position of confidentiality, the Office has developed a policy on when information can be released.

On a day-to-day basis, the Public Guardian and Trustee staff has to disclose information in order to manage the financial affairs of the Office's clients. It is expected they will only release as much information as is necessary to get the job done. The Office will only release that amount of information which is necessary, and in the best interest of the client. On the other hand, if releasing information is not in the best interest of the client, then the Office will not release it.

If a neighbor or friend of the client called asking for information, the Office would, there being no best interest, refuse to provide that information. If a son or daughter calls, the Office takes the same approach. If there is no financial advantage to release the information, then the Office will not release that information. When sons and daughters call, they have an expectation that the Office should release information to them because they are the son or daughter. If the client were

competent, he or she would decide whether to give any information to a son or daughter. Some parents do and some parents do not. A son or daughter has no higher right to a parent's financial information than a stranger.

The Public Guardian and Trustee also views our Office as a place of last resort. The Office is property guardian for a client when the family will not or cannot be the property guardian. A family member who wishes more control and more information can always apply to court to be the property guardian. If the court appoints that person, the Office will gladly hand over all information to that property guardian.

In many instances, when the Office is property guardian for a client, it is because some financial abuse has taken place prior to our involvement. In many instances, it is one of the children who has been the abuser. That child has tried to benefit or has benefited from being power of attorney, property guardian or unofficial manager of the parent's affairs. Sometimes there is a major family dispute occurring. Our Office is placed between two differing sides of the family. The Public Guardian and Trustee, when faced with an information request, does not want to give information to the abuser and does not want to take sides between family members or prejudice the rights of our client in case there is a claim for restitution. All of this reinforces the importance of a policy of confidentiality and protection of the client's privacy.

For all of the above reasons, the Public Guardian and Trustee has taken the side of protecting a person's privacy and enforcing a strict confidentiality policy.

Risk Management

The Public Guardian and Trustee continues to identify and manage risk.

Market fluctuations could have an adverse impact on the Public Guardian and Trustee's Common Fund. The Public Guardian and Trustee attempts to minimize this impact through:

- a balanced investment policy which is reviewed annually;
- an investment manager who makes all investment decisions;
- an investment consultant who advises on the performance of the investment manager;
- an investment advisory committee that reviews the performance of the investment manager and changes to the investment policy; and
- a policy that provides for the distribution of capital gains over a four-year period.

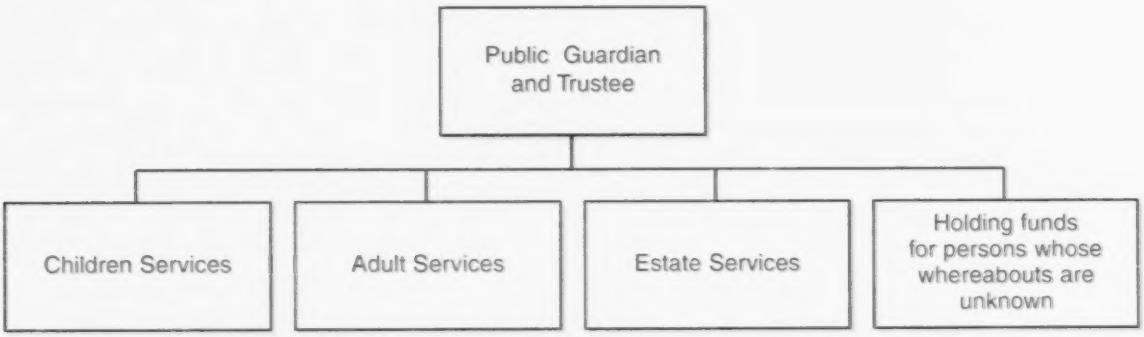
Other internal risk factors include: negligent administration of a client's affairs, breach of the fiduciary obligations, fraud, errors in recording income or expenses, and loss of assets.

These are the risks of any organization that holds funds and manages assets. They are also the risks that every Public Guardian and Trustee in Canada will have. The greatest risk is to ignore these risks and the preferred approach is to recognize them as risks and to take steps to minimize the risk and do all things in one's power to attempt to ensure that such events do not occur. The Public Guardian and Trustee, to minimize these risks to the greatest extent possible, does the following:

- provides training at monthly meetings;
- ensures that staff attend relevant conferences;
- has legal counsel review actions or decisions;
- maintains a policy manual and a regular updating process;
- conducts an internal review on a monthly basis;
- annual review by the Provincial Auditor;
- establishes a series of tight controls surrounding the issuing of cheques and the processing of expenses;
- created greater physical security in the Office;
- prescribed procedures for the opening of mail and the handling of cash and other assets;
- prescribed procedures for the recording of assets on the Office's computer system;
- maintains and updates controls around the recording of income and expenses;
- creates rules regarding the taking and recording of inventory;
- secures personal property when stored at the Office;
- places insurance on assets; and
- utilizes the computer system to allow only authorized staff to perform certain functions.

As stated above, the prudent approach is to recognize the risks and then take as many steps as possible to minimize those risks.

Management Structure



Fees

The Office has a principle of cost recovery in the provision of its services. Where a full cost recovery is not achievable, partial cost recovery is the objective. There are certain situations where clients cannot pay the full or partial fee and the Public Guardian and Trustee has the discretion to reduce those fees in appropriate circumstances. Under *The Public Guardian and Trustee Act* and *Regulations* and *The Administration of Estates Act* and *Regulations*, the Public Guardian and Trustee charges fees for services.

For children

- 1/12th of one per cent per month, of the amount held for the child.

For adults

- Five per cent or seven per cent of income.
- 1/12th of one per cent per month, of the value of the assets managed for adults.

For estates

- A percentage of the value of the estate:
  - seven per cent on first $50,000
  - five per cent on next $50,000
  - four per cent on excess over $100,000

  with a minimum fee of $900. This fee would apply if the Public Guardian and Trustee acts as administrator pending litigation or acts as administrator to defend a claim.

For co-decision-makers or temporary guardians

Where the Public Guardian and Trustee acts as a co-decision-maker or a temporary guardian, the fee is $250 per month.

For court appearances

If the Public Guardian and Trustee appears in court, it will ask the court to award it costs on a solicitor/client basis.

For litigation guardians

Where the Public Guardian and Trustee acts as a litigation guardian for a child or an adult, the fee is $500 plus disbursements and legal fees.

For issuing a certificate

Consent to Sale of Real Estate – varies, depending on the circumstances and/or the value of the property.

Certificate of No Infants – $30.

Approval of Settlement for an Infant – varies, depending on the amount of the settlement.

Relevant Legislation

These *Acts* and *Regulations* can be viewed at the Queen's Printer web site at **http://www.qp.gov.sk.ca/**

The Absentee Act, 1996

The Administration of Estates Act

The Administration of Estates Regulations

The Adult Guardianship and Co-decision-making Act

The Adult Guardianship and Co-decision-making Regulations

The Automobile Accident Insurance Act

The Child and Family Services Act

The Children's Law Act, 1997

The Condominium Property Act

The Crown Administration of Estates Act

The Department of Social Services Act

The Dependants' Relief Act, 1996

The Devolution of Real Property Act

The Escheats Act

The Family Maintenance Act, 1997

The Fatal Accidents Act

The Intestate Succession Act, 1996

The Land Titles Act, 2000

The Limitations Act

The Mentally Disordered Persons Act

The Powers of Attorney Act, 2002

The Powers of Attorney Regulations

The Public Guardian and Trustee Act

The Public Guardian and Trustee Regulations

The Queen's Bench Act, 1998

The Saskatchewan Insurance Act

The Survival of Actions Act

The Survivorship Act, 1993

The Tax Enforcement Act

The Teachers Superannuation and Disability Benefits Act

The Trustee Act

The Variation of Trusts Act

The Wills Act, 1996

Acknowledgement

The Public Guardian and Trustee acknowledges and thanks the many staff members who have continued to provide courteous, effective and efficient service to clients. Without their expertise and commitment, we would not have been able to attain our many goals for the 2006-07 fiscal year.

Management's Responsibility for the Financial Statements

Management is responsible for the integrity of the financial information reported by the Public Guardian and Trustee of Saskatchewan. Fulfilling the responsibility requires the preparation and presentation of financial statements and other financial information according to Canadian generally accepted accounting principles. These recommendations are consistently applied, with any exception specifically described in the financial statements.

The accounting systems used by the Public Guardian and Trustee include an appropriate system of internal controls to provide reasonable assurance that:

- transactions are authorized;
- the Public Guardian and Trustee's assets are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other information; and
- the accounts are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other financial information.

The Provincial Auditor of Saskatchewan has audited the Public Guardian and Trustee's Balance Sheet as at March 31, 2007, and the statement of Common Fund Earnings and Undistributed Earnings and Statement of Changes in Trust Funds for the year then ended. Their responsibility is to express an opinion on the fairness of management's financial statements. The Auditor's Report outlines the scope of their audit and their opinion.

Financial Statements

The financial statements on the following pages provide an account of the financial activities of the Public Guardian and Trustee of Saskatchewan for the year ended March 31, 2007.

PUBLIC GUARDIAN AND TRUSTEE OF SASKATCHEWAN

ESTATES AND TRUSTS UNDER ADMINISTRATION

FINANCIAL STATEMENTS

For the Year Ended March 31, 2007

Provincial Auditor Saskatchewan

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1920 Broad Street
Regina, Saskatchewan
S4P 3V2

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Fax: (306) 787-6383
Web site: www.auditor.sk.ca
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SASKATCHEWAN

AUDITOR'S REPORT

To the Members of the Legislative Assembly of Saskatchewan

I have audited the balance sheet of the Public Guardian and Trustee of Saskatchewan – estates and trusts under administration as at March 31, 2007 and the statements of common fund earnings and undistributed earnings and changes in trust funds for the year then ended. The Public Guardian and Trustee's management is responsible for preparing these financial statements for Treasury Board's approval. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Public Guardian and Trustee of Saskatchewan – estates and trusts under administration as at March 31, 2007 and the results of its operations and the changes in trust funds for the year then ended in accordance with Canadian generally accepted accounting principles.

Regina Saskatchewan
June 8, 2007

Fred Wendel, CMA, CA
Provincial Auditor

PUBLIC GUARDIAN AND TRUSTEE OF SASKATCHEWAN
ESTATES AND TRUSTS UNDER ADMINISTRATION
BALANCE SHEET
MARCH 31, **STATEMENT 1**

(in 000's)

	2007	2006
ASSETS		
Cash and Due from General Revenue Fund (Note 5)	$ 3,343	$ 2,438
Interest and Dividends Receivable	858	747
Common fund Securities (Schedule 1 & Note 4)	129,318	123,926
Individual Trust Assets (Schedule 2)	22,239	22,443
TOTAL ASSETS	$ 155,758	$ 149,554
LIABILITES		
Accounts Payable (Note 7)	$ 2,748	$ 2,490
Mortgages and Loans Payable	492	474
	3,240	2,964
Trust Equity		
Trust Equity	131,983	129,789
Undistributed Earnings (Statement 2)	20,535	16,801
	152,518	146,590
TOTAL LIABILITIES AND TRUST EQUITY	$ 155,758	$ 149,554

(See Accompanying Notes to the Financial Statements)

PUBLIC GUARDIAN AND TRUSTEE OF SASKATCHEWAN
ESTATES AND TRUSTS UNDER ADMINISTRATION
STATEMENT OF COMMON FUND EARNINGS AND UNDISTRIBUTED EARNINGS
MARCH 31, **STATEMENT 2**

(in 000's)

	2007	2006
REVENUE		
Interest and Dividends (Note 3 (ii))	$ 4,948	$ 3,986
Common Fund Realized Gains, Losses and Market Value Appreciation	6,640	8,547
	11,588	12,533
Less: Management Fees	(274)	(265)
Earnings Available for Distribution	**11,314**	**12,268**
Distributed Earnings (Note 3 (iii))		
Interest and Dividends	(3,952)	(3,691)
Realized and Unrealized Capital Gains	(3,628)	(3,084)
Undistributed Earnings Previous Year	16,801	11,308
UNDISTRIBUTED EARNINGS, END OF YEAR	$ 20,535	$ 16,801

(See Accompanying Notes to the Financial Statements)

PUBLIC GUARDIAN AND TRUSTEE OF SASKATCHEWAN
ESTATES AND TRUSTS UNDER ADMINISTRATION
STATEMENT OF CHANGES IN TRUST FUNDS
MARCH 31, **STATEMENT 3**

(in 000's)

	2007	2006
Increase in Trust Funds		
Trust Funds Acquired		
Cash	$ 2,581	$ 3,418
Common fund Earnings Available for Distribution	11,314	12,268
Other Amounts Received on Behalf of Clients	29,113	28,821
Total Increase in Trust Funds	43,008	44,507
Decrease in Trust Funds		
Trust Funds Released		
Cash	16,328	16,213
Payments Made on Behalf of Clients	17,767	17,210
Administration Fees (Note 6)	2,781	2,509
Total Decrease in Trust Funds	36,876	35,932
Net Change in Individual Non-cash Assets	(204)	2,079
Increase in Trust Funds	5,928	10,654
Balance, Beginning of Year	146,590	135,936
TRUST FUNDS, END OF YEAR	$ 152,518	$ 146,590

(See Accompanying Notes to the Financial Statements)

PUBLIC GUARDIAN AND TRUSTEE OF SASKATCHEWAN
ESTATES AND TRUSTS UNDER ADMINISTRATION
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED MARCH 31, 2007

1. Authority and Purpose

Effective April 1, 1984 the Office of the Public Guardian and Trustee of Saskatchewan was established pursuant to *The Public Trustee Act* and continued under *The Public Guardian and Trustee Act*. *The Public Trustee Act* was repealed and *The Public Guardian and Trustee Act* was proclaimed effective May 17, 2002.

Section 3(1) of *The Public Guardian and Trustee Act* states:

> 3(1) The Public Trustee is continued as a corporation sole under the name of the Public Guardian and Trustee of Saskatchewan.

Section 3(3) of *The Public Guardian and Trustee Act* states:

> 3(3) The public guardian and trustee is the successor in office to:
>
> (a) the Official Guardian appointed pursuant to *The Infants Act*; and
> (b) the Administrator of Estates appointed pursuant to *The Administration of Estates of Mentally Disordered Persons Act*.

Effective November 12, 1992, the Public Trustee became the official administrator for each judicial centre pursuant to *The Queen's Bench Act*. (Now *The Administration of Estates Act*)

Effective August 13, 2002, the Public Guardian and Trustee became responsible for holding property for persons whose whereabouts is unknown.

The mandate of the Public Guardian and Trustee is to protect vulnerable persons. The primary functions of the Office are:

(a) administering the property and finances of adults who are mentally incompetent;
(b) protecting property rights of children under the age of eighteen;
(c) administering the affairs of deceased persons; and
(d) holding property for persons whose whereabouts is unknown.

2. Scope of the Financial Statements

These financial statements reflect the assets and liabilities of estates and trusts under the administration of the Public Guardian and Trustee. In addition, these financial statements reflect the annual changes in those assets and liabilities including:

a) revenue earned on behalf of clients;
b) income received on behalf of clients;
c) new client account additions;
d) released client withdrawals;
e) payments made on behalf of clients; and
f) administration fees payable to the Public Guardian and Trustee.

3. Significant Accounting Policies

These financial statements are prepared in accordance with Canadian generally accepted accounting principles. Preparation of financial statements in accordance with Canadian generally accepted accounting principles requires management to make estimates and assumptions in determining the reported amounts for assets and liabilities. Actual results could differ from management's best estimates, as additional information becomes available. The following policies are considered significant.

(i) Common Fund Securities

Common fund securities, primarily bonds, debentures and shares, are stated at market value. Market value is determined with reference to closing year-end sale prices from recognized security dealers. In the absence of recorded sales, market value is determined by reference to closing year-end bid and ask prices.

Short-term investments are stated at cost, which approximates market value.

(ii) Common Fund Income Recognition

Income earned on common fund securities is recorded using the accrual basis of accounting with amounts earned in the fiscal year but not received prior to the year-end reflected as interest receivable.

(iii) Common Fund Distribution

Common fund investments generate interest, dividends, realized and unrealized capital gains (losses) income. Pursuant to section 5, 6 and 7 of *The Public Guardian and Trustee Regulations,* interest, dividends and gains/(losses) income earned on the common fund investments are to be calculated and distributed to client trust accounts after the end of each quarter. Section 6 and 7 outline how interest and dividends shall be calculated. Section 7 allows the Public Guardian and Trustee to set the amount of capital gains (losses) to be distributed.

As the investment accounts are stated at market value, the undistributed interest, dividends and capital gains (losses) for the quarter ended March 31 are included in the financial statements as part of the investment value and the undistributed client equity. These interest, dividends and capital gains (losses) amounts are distributed to the client equity accounts in the following year.

(iv) Individual Trust Assets

Individual trust assets consist of accounts receivable, commodities, individual trust securities, personal property and insurance and real estate. Individual trust securities, primarily term deposits, bonds and RRSP accounts are initially stated at market value at the date the Public Guardian and Trustee assumes control of the securities. For financial statement purposes, these securities are adjusted to the market value annually using the most recent valuation information available. Adjustments between the most recent available information and March 31 of each year for a particular client are likely minimal and would affect the value of the asset and the trust liability equally.

Shares are initially recorded at the market value at the time the public guardian and trustee assumes responsibility for control of the investment. Subsequent increases or decreases in the market value are reflected in the trust accounts annually. Where a market value for a share is not readily available, the shares are recorded for accountability purposes at a nominal value of $1.

Other individual trust assets consist of commodities, real estate, personal property, life insurance policies, pension plans and annuity contracts and are stated at the following values:

(a) **Commodities** are stated at market value, which is determined annually with reference to the estimated final delivery price for the particular commodity.
(b) **Real estate,** including real estate holdings for infants where the Public Guardian and Trustee is appointed property guardian, are initially recorded at appraised value at the date the Public Guardian and Trustee assumes control of the asset or at cost if the real estate is purchased on behalf of clients by the Public Guardian and Trustee. Real estate values are adjusted to appraised values annually. If no valuation information is available, these assets are recorded at a nominal value of $1.
(c) **Miscellaneous Personal Property** is stated at amounts determined from information available to the Public Guardian and Trustee at the date the Public Guardian and Trustee assumes control of the assets. Subsequent adjustments are made if additional valuation information is received. If no valuation is available, these assets are recorded at a nominal value of $1.
(d) **Life Insurance Policies** that carry a cash surrender value are stated at the cash surrender value as determined with reference to the most recent valuation information available prior to March 31. Policies that do not carry a cash surrender value are stated at a nominal value of $1.
(e) **Pension Plans and Annuity Contracts** are stated at residual value as determined with reference to the most recent evaluation information available prior to March 31 of each year. Pension plans and annuity contracts with no residual value are stated at a nominal value of $1.

4. Common Fund Securities

The Public Guardian and Trustee Act provides as follows:

47(1) The Public Guardian and Trustee shall:

(a) place money received by the Public Guardian and Trustee pursuant to this Act, any other Act or court order in a common fund; and
(b) subject to the approval of the Investment Board, invest in the name of the Public Guardian and Trustee that part of the common fund that in the Public Guardian and Trustee's opinion is not immediately required for persons for whom the Public Guardian and Trustee holds funds.

Common Fund Securities are invested through a single "common" fund to ensure consistency of return among clients. The investment objectives of the common fund

are to achieve at least market returns with prudent risk diversification, with the potential for enhanced returns through active investment management for a majority of the portfolio. The Public Guardian and Trustee recognizes that there are diverse time horizons for its clients and that capital preservation is of primary concern. The employed investment objectives include a multiple asset, total return approach which values all types of investment income equally, a moderate income requirement to supplement other liquidity sources, a requirement for stability and maximization of return, and a degree of inflation protection and capital appreciation.

The Public Guardian and Trustee recognizes that, by their nature, investments carry with them certain risks. The investment policy employed by the Public Guardian and Trustee is designed to mitigate these risks as much as possible by placing restrictions on the overall content and quality of the permitted investments. The following describes the risks associated with the investment portfolio, managed through an investment manager, by the Public Guardian and Trustee.

Price Risk

Price risk refers to the potential that the value of investments will fluctuate as a result of foreign currency, interest rate and general market changes.

The value of the common fund investments will fluctuate with changes in foreign currency, interest rate and general market changes. To mitigate these risks the Public Guardian and Trustee works with an investment manager that actively manages asset class allocations through a balanced fund approach. The employed investment policy limits foreign currency exposure by permitting a maximum of 40% foreign investment with a stated benchmark of 26% foreign investment. The policy also limits market risk by permitting a maximum of 50% equity investment, including foreign equities with a benchmark of 40% equity investment. The Public Guardian and Trustee manages interest rate risk by limiting the quantity and quality of interest rate sensitive investments to a maximum of 100% of the portfolio with a benchmark of 57% fixed income securities. Market risk is managed by taking a conservative prudent approach to investment.

Credit and Liquidity Risk

Credit and liquidity risk arises from the potential for an investee to fail or for an issuer to default on its obligations to the common fund. The Public Guardian and Trustee

mitigates this risk by limiting the quantity and quality of the permitted investments to high quality, highly rated equity investments and highly rated fixed income securities.

5. Due from the General Revenue Fund

The Public Guardian and Trustee's operating bank account is included in the Consolidated Offset Bank Concentration arrangement for the Government of Saskatchewan. Interest earned on the balance attributed to the public guardian and trustee is calculated and paid quarterly into the Public Guardian and Trustee's operating account using the Government's thirty day borrowing rate and the Public Guardian and Trustee's average daily bank account balance. The Government's average thirty day borrowing rate for the year-ended March 31, 2007 is 4.09% (For the year-ended 2006 it was 2.82%).

6. Administration Fees

Pursuant to the provisions of *The Public Guardian and Trustee Regulations* and *The Administration of Estate Regulations*, the Public Guardian and Trustee may charge a fee for services performed in the management of client accounts. Such fees charged are payable to the General Revenue Fund of the Province of Saskatchewan.

7. Accounts Payable

Accounts payable represent encumbrances of client assets that are payable to independent third parties. These client obligations are settled, as client resources become available. In some cases, a client's liabilities exceed the stated value of their assets. These items are included as accounts payable and are paid, as the resources of the client become available to do so.

Accounts payable consist of the following balances:

	(in 000's) 2007	2006
Accounts Payable to Third Parties	$ 2,078	$ 1,739
Administration Fees Payable to the Public Guardian and Trustee	670	751
	$ 2,748	$ 2,490

8. Common Fund Earnings Distributions

In April 2007, the Public Guardian and Trustee distributed interest, dividends and capital gains (losses) for the quarter ended March 31, 2007, in the amounts as follows (in 000's): interest $797 (2006 - $734), dividends $65 (2006 - $68), foreign dividends $61 (2006 - $58) and capital gain(loss) $1,176 (2006 –$938).

9. Related Party Transactions

Victim's Fund

The Public Guardian and Trustee holds and invests funds for the Victim's Fund established pursuant to *The Victims of Crime Act, 1995*. Earnings are allocated pursuant to sections 5, 6 and 7 of *The Public Guardian and Trustee Regulations*, but no fee pursuant to those regulations is charged.

The trust equity held on behalf of the Victim's Fund, the amount due to the Victim's Fund, and the Common Fund earnings distributed to the Victim's Fund is as follows:

	(in 000's) 2007	2006
Trust Equity at March 31	$ 359	$ 482
Common Fund earnings distributed During the year	$ 27	$ 37
Common Fund earnings to be Distributed in April	$ 7	$ 8

10. Financial instruments

(a) For the following financial instruments the carrying value approximates their fair value due to the immediate of short-term nature of these instruments.

interest and dividends receivable
accounts payable

The amount, timing and certainty of future cash flows related to accounts payable is uncertain as the Public Guardian and Trustee can only make payments on these liabilities as client financial circumstances permit. However, it is estimated that this would not significantly impact the fair value.

There is exposure to minimal credit risk from the potential non-payment of interest and dividends receivable.

(b) Mortgages and loans payable are long term liabilities. As the Public Guardian and Trustee can only make payments on these liabilities as client financial circumstances permit, it is unknown what the future cash flows will be. Therefore, determination of the fair value of mortgages and loans payable is not practicable.

PUBLIC GUARDIAN AND TRUSTEE OF SASKATCHEWAN
ESTATES AND TRUSTS UNDER ADMINISTRATION
SCHEDULE OF COMMON FUND SECURITIES
FOR THE PERIOD ENDED MARCH 31, **SCHEDULE 1**

(in 000's)

	2007		2006	
		% of Portfolio		% of Portfolio
Bonds and Debentures				
Government of Canada	$ 37,537	29%	$ 34,787	28%
Province of Saskatchewan	644	1%	1,357	1%
Other Provinces	17,175	13%	16,240	13%
Corporations	17,703	14%	14,138	11%
Total Bonds and Debentures*	73,059		66,522	
EAFE Pooled Equity Fund	17,414	13%	17,709	14%
Other Equities				
Canadian	15,367	12%	17,273	14%
Foreign	17,659	14%	17,742	15%
Short Term Investments*	5,819	4%	4,680	4%
TOTAL COMMON FUND SECURITIES	$ 129,318		$ 123,926	
Total Canadian Investments	94,245	73%	88,475	71%
Total Foreign Investments	35,073	27%	35,451	29%
TOTAL COMMON FUND SECURITIES	$ 129,318		$ 123,926	

*All Investments held are Canadian

PUBLIC GUARDIAN AND TRUSTEE OF SASKATCHEWAN
ESTATES AND TRUSTS UNDER ADMINISTRATION
INDIVIDUAL TRUST ASSET
FOR THE PERIOD ENDED MARCH 31, **SCHEDULE 2**

(in 000's)

	2007	2006
Accounts Receivable	$ 2,309	$ 2,565
Commodities	163	152
Individual Investments	9,407	8,517
Personal Property and Insurance	3,331	2,871
Real Estate	7,029	8,338
Total Individual Trust Assets	$ 22,239	$ 22,443